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CHAPTER 5

CIVIL RIGHTS

I. OVERVIEW

Civil rights requirements associated with HOME grants are designed to ensure equal opportunity and access to all benefits derived from the Montana HOME Program.

The laws protect people from housing and employment discrimination on the basis of:

- age
- color
- marital status
- national origin
- physical or mental disability
- race
- creed (fundamental beliefs)
- religion
- gender
- familial status

Protected Groups

Population groups specifically protected by the provisions of Fair housing and equal employment laws (commonly referred to as *protected* groups) include:

- minorities;
- women;
- groups distinguished by age (e.g., elderly); and
- persons with physical, cognitive, or mental disabilities.

The law also contains provisions barring harassment, intimidation, interference, or coercion based on someone's protected class. A provider cannot retaliate against someone who exercises her/his civil rights by filing a complaint of housing discrimination. Protected groups are specifically protected from discrimination in the following areas:

Housing: This includes the sale or rental of housing, insurance, appraisal, and services associated with financing, advertising or providing brokerage services. Nondiscrimination requirements are referred to as *fair housing* (see the following Housing Rights discrimination website at: <http://housing.mt.gov/Includes/HousingRightsTable.pdf>)

Employment: This includes employees, contractors and subcontractors, funded in whole or in part with federal money. These provisions are referred to as *equal employment opportunity*.

Participation in or Benefits Derived from HOME Funded Activities: This means no eligible person may be excluded from participating in any HOME-funded activity, nor be denied any benefits resulting from activities funded in whole or in part with HOME money.

II. GRANTEE RESPONSIBILITIES

A. REQUIREMENTS PRIOR TO COMMENCING PROGRAM ACTIVITIES

Before beginning program activities, Grantees must provide evidence of the following within the Management Plan:

- ☑ Local Government Grantees must adopt and enforce a **Hatch Act Resolution** that restricts the political activity of local government employees employed in connection with programs financed in whole or in part by federal loans or grants. This ensures that employees in executive agencies who receive federal financial assistance will not use official authority to influence or interfere with the outcomes of elections or nominations or to directly or indirectly coerce contributions from subordinates to support a political party or candidate. Copies of the U.S. Merit System Protection Board (MSPB) brochure entitled, *Political Activity and the State and Local Employee*, provides additional information about the Hatch Act. The brochure (Stock No. 062-000-00049-0) may be ordered from the GPO order desk at (202) 512-1800 and is on the web at <http://www.osc.gov/hatchact.htm> (the 12-page booklet may be downloaded in PDF format at no cost). Advisory opinions may be obtained directly from the MSPB Office of the Special Counsel by using their toll-free number: 800-209-8960. Additional information may be obtained from the MSPB web site: www.mspb.gov.
- ☑ HOME Grantees must adopt and enforce a **Nondiscrimination Policy** designed to ensure that all project activities funded in whole or in part with HOME funds are conducted in a manner that will not cause illegal discrimination.
- ☑ A **Fair Housing Resolution** similar to that contained in **Exhibit 5-A, Sample Fair Housing Resolution** must be adopted by Grantees.
- ☑ An **Equal Employment Opportunity Poster** like that in **Exhibit 5-B** must be posted in a conspicuous location.

- ☑ The Grantee must adopt an **Affirmative Marketing Plan** when HOME funds are used for rental and homebuyer projects containing *5 or more housing units*. The Plan consists of actions to provide information and otherwise attract eligible people in the housing market area to available housing without regard to age, race, color, national origin, marital status, gender, religion or creed, familial status or disability. The Affirmative Marketing Plan must include:
 - a. Methods for informing the public, owners, and potential tenants about Federal fair housing laws and affirmative marketing policy (e.g., use of Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups).
 - b. Requirements and practices each owner must adhere to in order to carry out affirmative marketing procedures and requirements (e.g., use of commercial media, community contacts, Equal Housing Opportunity logotype or slogan, display of fair housing poster).
 - c. Procedures used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies).
 - d. Commitment to keep records describing actions taken by owner to affirmatively market HOME-assisted units and records to assess the results of these actions.
 - e. Description of how the Grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
- ☑ A **Complaint Resolution Procedure** that allows for prompt and equitable resolution of charges alleging non-compliance with ADA must be adopted and posted by the Grantee. The complaint procedure must allow current employees, applicants or members of the public who believe they have been discriminated against on the basis of a disability to report the incident. Notice of these procedures must be posted in all work areas and must be visible to the public. (See **Exhibit 5-C** for sample *Complaint Resolution Procedures*).

B. REQUIREMENTS DURING PROGRAM IMPLEMENTATION

Four general areas must be documented during implementation of your HOME program in order to demonstrate compliance with federal civil rights requirements. They are:

Nondiscrimination in Program Activities: Efforts must be taken to ensure minority participation in the program, including Section 3 compliance. (See **Exhibit 5-D** for *Required Section 3 Contract Language*).

Grantee and Contractor Employment: An affirmative action plan must be adopted and followed, and activities initiated to extend employment opportunities to minorities and women. Actions must be taken by contractors and subcontractors to employ minorities and women.

Fair Housing: Grantees must comply with the federal mandate to prevent discrimination and affirmatively market housing units.

Accessibility: Actions must be taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

1. Nondiscrimination in Program Activities.

Administrative methods designed to ensure nondiscrimination in project activities and site selection criteria designed to benefit minorities must be documented.

If there is an area in the Grantee's jurisdiction that has serious community development needs and a large concentration of minority residents, activities in that area should be given high priority whenever possible. **Minority areas and minority persons should benefit at least in proportion to their percentage of the community's overall population.** Local officials should identify which activities will most benefit their minority households.

Section 3 Compliance:

Section 3 is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance.

Under Section 3 of the HUD Act of 1968, wherever HUD financial assistance is given for housing or community development, to the greatest extent feasible, economic opportunities for training and employment arising in connection with this HOME-assisted project will be extended to lower income project area residents and businesses. Further, the contractor will, to the greatest extent feasible, utilize women and minority business concerns located in or substantially owned by residents of the project area, in awarding contracts and procuring services and supplies (see **Exhibit 5-D**). The project area should have been identified in a Grantee's application and Management Plan.

Who are Section 3 residents?

Section 3 residents include public housing and low-income persons who live in the area in which a HUD-assisted project is located.

What is a Section 3 business?

A business that is owned by Section 3 residents or employs Section 3 residents in full-time positions or subcontracts with businesses which provide economic opportunities to low income persons.

How can Grantees and Contractors find Section 3 residents to work for them?

Grantees and Contractors can recruit in the neighborhood and public housing developments to tell residents about available training and job opportunities. Distributing flyers, posting signs, placing ads, and contacting resident organizations and local community development and employment agencies to find potential workers are effective ways of getting jobs and people together.

How can HOME Grantees demonstrate compliance with Section 3 requirements?

- ✓ Section 3 language **is required** in bid documents and contracts. This language ensures that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending HOME benefits into the Grantee's community. **Exhibit 5-D**, *Required Section 3 Contract Language*, contains sample language for advertising and contracts. The Required Supplemental Contract Conditions found in Chapter 4 includes the Section 3 contract language.
- ✓ Grantees requesting HOME reimbursement for a Contractor **must** complete **Exhibit 3-F**, *Economic Opportunities for Low-and Very Low-Income Persons in Connection with Assisted Projects* at the time a Request for Payment Report is submitted. This form summarizes accomplishments regarding employment, training and contracting opportunities.
- ✓ HUD requires records be kept of program beneficiaries by ethnicity, race, and marital status and gender of the head of household for those who have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds. **Exhibit 5-E**, *Individual Direct Benefit Recording Form*, and *Direct Benefit Summary Data*, may be used by the Grantee to track beneficiaries.

2. Grantee and Contractor Employment

Equal employment opportunities must be promoted. Grantees must take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rates of pay and selection for training. Employment efforts cannot exclude elderly individuals or persons with disabilities. HOME Grantees shall take affirmative steps to assure that small, minority and women's business enterprises are used when possible as sources of supplies, equipment, construction and professional and other services.

A reasonable guideline for equal employment would be that the percentage of minorities and women in the Grantee's work force should be at least equal to the percentages of those groups within the community's work force.

Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned and female-owned businesses must be maintained by the Grantees.

How can HOME Grantees demonstrate compliance with equal opportunity employment practices?

- ✓ Adopt nondiscrimination and equal employment opportunity policy or policies.
- ✓ Make the agency's equal employment policies clearly known to everyone involved in hiring, promotion, and salary decisions. All employment advertisements **must**, at a minimum, include the following statement:

(Name of Grantee) is an Equal Opportunity Employer. Minorities and women are encouraged to apply.

- ✓ Complete **Exhibit 3-G, Contractor Reporting Form**, at the time a Request for Payment Report is submitted, and the Grantee is requesting HOME reimbursement for a contractor or subcontractor. This form summarizes the racial/ethnic and gender character of each business entity receiving a contract or subcontract to be paid with HOME funds.
- ✓ Develop procurement procedures that facilitate opportunities for certified women and minority business enterprises (WBEs and MBEs) to participate as vendors and suppliers of goods and services. This is discussed further in Chapter 4, Procurement.

Even smaller, rural communities should make reasonable efforts to solicit bids from appropriate local firms and MBE/WBE firms beyond the limits of their county. **The important thing is that MBE/WBE firms have the opportunity to bid, and are encouraged to do so.**

The Civil Rights Bureau of the Montana Department of Transportation (MDT) maintains a directory of Disadvantaged Business Enterprises (DBEs), a term used to collectively refer to both Woman-owned Business Enterprises (WBEs) and Minority-owned Business Enterprises (MBEs). Grantees can access the Disadvantaged Business Enterprise (DBE) Directory maintained by the Montana Department of Transportation via Internet address:

<http://www.mdt.state.mt.us/scripts/cntrct/cntrctxt.pl?rptname=DBE+Directory>

or by contacting the MDT Civil Rights Bureau - DBE Program, 2701 Prospect Avenue, Helena MT 59620, (406) 444-6337 (toll free number: 800-883-5811), Fax phone: (406) 444-7685.

HOME Grantees **must** consult this directory and mail an announcement of all bid solicitations and Requests for Proposals to MBE/WBE firms within their region. **Exhibit 5-F** provides a sample *Letter of Work Notification to a MBE/WBE Firm*.

- ✓ Utilize the local media, electronic and print, to market and promote contract and business opportunities for MBEs and WBEs;
- ✓ Advertise in minority newspapers such as newspapers published on the reservations (see **Exhibit 5-G** for a listing of *Tribal Newspapers and Newspapers Published Adjacent to Montana's Indian Reservations*).
- ✓ Notify minority organizations, located in the area, of potential HOME-related job openings.
- ✓ Include in employment recruitment records a summary of the number of applicants for each position relating to the HOME Program, and the number of applicants who are minorities, women and persons with disabilities. Document by race, gender and disability the number of persons interviewed and the reasons for the hiring decisions. Data on overall employment of women, minorities and persons with disabilities should be summarized and reported on the *Applicant Summary Sheet, Interview and Hiring Form, and Grantee Employment Summary* provided in **Exhibit 5-H**.

3. Fair Housing

The Fair Housing Act was first passed in 1968, and it prohibited discrimination based on race, color, religion and national origin. Discrimination based on gender was added in 1974. When the law was comprehensively amended in 1988, it was changed to include discrimination against people because of disability and because of familial status – the presence of children under the age of 18.

The Fair Housing Act is enforced administratively by the U.S. Department of Housing and Urban Development (HUD). People who believe that they have been harmed by a violation of the Act may file administrative complaints with HUD, and HUD conducts an impartial investigation of the claims.

The Act also authorizes federal lawsuits by the U.S. Department of Justice, and private lawsuits that can be filed in federal or state courts by individuals. Many state and local fair housing enforcement agencies also have authority to investigate violations and bring enforcement actions. The general authority for all of these enforcement activities is found in the Fair Housing Act, so the enforcement authority given under the Act is quite broad.

Where violations of the law are established, remedies under the Fair Housing Act may include the award of compensatory damages to victims of discrimination, sometimes numbering in the hundreds of thousands of dollars, orders for comprehensive corrective action, and awards of punitive damages to victims or civil penalties to the government. In design and construction cases, remedies also may require retrofitting housing that has already been constructed to make it comply with the Act's design and construction requirements.

Often consumers and providers believe that federal and state Fair Housing Laws cover only federal or state-funded housing projects. The federal and state Fair Housing Laws cover ALL housing transactions that affect a qualified applicant's ability to access the housing of his/her choice.

All Grantees are obligated to take steps to affirmatively further fair housing, regardless of project type or size. Fair housing means that no person shall be subjected to discrimination (because of race or color, national origin, religion or creed, sex, physical or mental disability, familial status, age, marital status or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions. Specifically, **it is unlawful to:**

- ✓ Refuse to sell or rent a dwelling, or to negotiate for the sale or rental of a dwelling.
- ✓ Discriminate in the terms, conditions or privileges involved in a sale or rental.
- ✓ Engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies dwellings.
- ✓ Ask a person's race, color, national origin, religion, creed, age, sex, marital status, familial status or disability.
- ✓ Make, print or publish, or cause to be made, printed or published, any notice, statement (oral or written) or advertisement that indicates any illegal preference or limitation.
- ✓ Select media or locations for advertising that deny particular population segments access to information about housing opportunities.
- ✓ Impose different sales prices or rental charges upon a dwelling.
- ✓ Use different qualification criteria or sale or rental standards or procedures (such as income standards, credit analyses, etc.).
- ✓ Represent to any person that a dwelling is not available for inspection, sale or rental when such dwelling is, in fact, available.
- ✓ Discourage any person from inspecting, purchasing or renting a dwelling (by exaggerating drawbacks, failing to inform them of desirable features, limiting information regarding suitably priced dwellings available for sale or rental, or communicating that he or she would not be comfortable or compatible with existing residents).

- ✓ Engage in blockbusting practices (inducing property owners to sell hastily or at a loss, by appeals to fears of depressed property values or other undesirable neighborhood consequences because of threatened minority encroachment, with the intention to resell at inflated prices).
- ✓ Deny access to or membership or participation in any multiple-listing service, real estate brokers' association, or other service organization or facility.
- ✓ Limit the use of privileges, services or facilities associated with a dwelling.
- ✓ Assign any person to a particular section of a community or to a particular floor of a building.
- ✓ Refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently.
- ✓ Discriminate in the making of loans or the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings including different interest rates, points, or fees.
- ✓ Deny reasonable accommodations, at their expense, to persons with disabilities, in sales, rental, and terms and conditions.
- ✓ Fail to make repairs or delay maintenance or repair of sale or rental dwellings.
- ✓ Evict tenants because of age, race, color, religion, marital status, political ideas, gender, physical or mental disability, familial status, or national origin.
- ✓ It is also unlawful for anyone to aid, abet, incite, compel or coerce the doing of an act forbidden under the Montana housing law.

HOME Grantees are responsible for affirmative fair housing practices in soliciting renters, determining eligibility, and in the conduct of all sales or rental of housing.

How can HOME Grantees demonstrate compliance with fair housing practices?

- ✓ Use the "Equal Housing Opportunity" slogan and logo on Grantee letterhead and all program publications and application.
- ✓ Display Fair Housing Posters (see **Exhibit 5-I**) and distribute a Fair Housing Pamphlet and Complaint form (see sample in **Exhibit 5-C**) to explain fair housing rights, practices and statutory requirements.
- ✓ Publicize and promote the fair housing resolution adopted by the Grantee.
- ✓ Review project activities to ensure that they serve low and very low-income minority residents as well as non-minorities.

- ✓ Develop a public information network using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and minority households.
- ✓ Develop a fair housing assistance program to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities.
- ✓ Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.
- ✓ Survey special housing needs of minorities and women to determine possible effects of discrimination.

4. **Accessibility Requirements for Persons with Disabilities**

HOME Grantees must ensure accessibility (both structurally and administratively) to programs, services and benefits for persons with physical and mental disabilities. Grantees and their contractors may not discriminate against qualified individuals with disabilities.

Housing providers must make reasonable modifications to housing units, at the expense of the renter, to enable the renter with a disability to use the housing. (Where reasonable, the housing provider may permit changes only if the property can be restored to its original condition when the renter moves.) Housing providers must make reasonable accommodations in rules, policies or services to allow persons with disabilities equal opportunities to use and enjoy the housing unit and property.

The Americans with Disabilities Act (ADA) extends to persons with disabilities the civil rights that are now available to groups protected under the Civil Rights Act. Integration of individuals with disabilities into the mainstream of society is the fundamental purpose of the ADA.

An individual with a disability means any individual who (i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to Titles I, II, III, VI, and VIII of the Rehabilitation Act of 1973, as Amended.

The term also applies to someone with a record of impairment, such as a history of cancer or alcoholism (but it does not apply to current drug or alcohol abusers). A disability also includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including

speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, and skin and endocrine; as well as any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This definition includes persons who do not perceive themselves as having a disability, but who are perceived by others as having a disability (e.g., a person disfigured in an accident, someone with AIDS, or someone living with or associated with a person who has AIDS).

HUD does not require Grantees to take actions that would result in a fundamental alteration of facilities or programs, or that would impose an undue financial or administrative burden on the Grantee. However, if the public cannot get to (or some group is not likely to get to) the Grantee's HOME program, reasonable accommodations must be made so that the program can be accessed by persons with disabilities. HUD recommends that administrative changes be considered before costly structural changes.

If the Grantee's facilities are not accessible, the Grantee must find some means of making HOME program activities and services accessible to persons with disabilities. HOME Grantees are responsible for providing access to persons with disabilities in four areas: *communications, employment opportunities, program benefits, and physically accessible housing*.

- ✓ Accessible Communications: In order to ensure accessibility of program services and activities to persons with disabilities, Grantees must be aware of the possibility that individuals may need to use alternative forms of communication. When marketing its programs and services, the Grantee must take the following steps:

- a) All publications must include a statement similar to the following:

This document will be provided in an alternative, accessible format upon request.

- b) When planning public meetings, be cognizant of the fact that the meeting room must be physically accessible, i.e. persons in wheelchairs must be able to maneuver into and through the building and into the meeting room. When advertising public meetings or program services and activities, the Grantee must include a written statement similar to the following:

The (Grantee) makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in any HOME Program service or activity. Persons needing an accommodation must notify (who) no later than (date) to allow adequate time to make needed arrangements. You can call (telephone number) or write to (address) to make your request known. Persons using a TDD may call through the Montana Relay Service (800) 253-4091.

The Montana Statewide Independent Living Council (SILC) was created on October 1, 1992, under MCA 2-15-122. It provides information about statewide organizations that aid in making independent living a reality for Montanans with disabilities. The council consists of 12 voting members appointed by the Governor for three-year terms. These individuals represent a broad range of disabilities and are knowledgeable about Centers for Independent Living and Independent Living Services generally. The majority of the voting members are persons with disabilities. Additional representatives are from Centers for Independent Living, unserved/under-served populations such as Native Americans, parents of children with disabilities, advocates, consumers, business representatives, and various other disability organizations and state agencies. You can reach SILC by phoning DPHHS Vocational Rehabilitation at (406) 444-2590 (Voice/TDD) or FAX at (406) 444-3632. Their website is:

http://www.dphhs.state.mt.us/MontLive/Montana_Independent_Living.htm

The following is a sampling of the organizations that can be consulted for more detailed information about devices available to assist in communicating effectively with persons with disabilities.

Montana's Technology-Related Assistance
Program for People with Disabilities
Rural Institute on Disabilities
Univ. of Montana, 52 Corbin Hall
Missoula MT 59812
(406) 243-5467 (Voice/TTY)
1-800-732-0323 (Voice/TTY Toll free)
(406) 243-4730 (FAX)
<http://ruralinstitute.umt.edu>

Rocky Mountain Disability & Business
Technical Assistance Center
3630 Sinton Road, Suite 103
Colorado Springs CO 80907
1-800-949-4232 (Voice/TTY)
(719) 444-0268 (Voice/TTY)
(719) 444-0269 (FAX)
www.ada-infonet.org/ada-infonet/default.asp

Montana Independent Living Project
1130 Butte Avenue, P.O. Box 5415
Helena MT 59604-5415
(406) 442-5755 or 1-800-735-6457
(406) 442-5756 (TTY)

North Central Independent Living Svcs.
1120 25th Avenue Northeast
Black Eagle MT 59414
(406) 452-9834 (Voice/TTY)
(406) 453-3940 (FAX)

Summit Independent Living Center, Inc.
(Missoula & Mineral Counties)
700 SW Higgins Ave., Suite 101
Missoula MT 59803
(406) 728-1630 (Voice/TT)
(406) 829-3309 (FAX)
1-800-398-9002 (Toll free)
www.summitilc.org

Living Independent for Today &
Tomorrow (LIFTT)
914 Wyoming Avenue
Billings MT 59101-1637
(406) 259-5181
1-800-669-6319 (Toll free)
www.lifftt.org

Summit Independent Living Center
(Flathead & Lincoln Counties)
275 Corporate Ave, Suite 901
Kalispell MT 59901
(406) 257-0048 (Voice/TT)
1-800-995-0029 (Toll free)
(406) 257-0634 (FAX)

Living Independent (LIFTT)
2200 Box Elder, Suite 2
Miles City MT 59301
(406) 232-2599 (Voice/TTY)
(406) 365-4064 (FAX)

Summit Independent Living Center
(Ravalli County)
316 N Third, Suite 113
Hamilton MT 59840
(406) 363-5242 (Voice/TT)
1-800-398-9013 (Toll free)
(406) 363-9035 (FAX)

Living Independent (LIFTT)
PO Box 621
Glendive MT 59330
(406) 365-4062 (Voice/TTY)
(406) 365-4064 (FAX)

Summit Independent Living Center
(Lake & Sanders Counties)
111 Second Ave. SW
Ronan MT 59864
(406) 676-0190 (Voice/TT)
1-800-528-1312
(406) 676-0190 (FAX)

Disability Access Symbols are now online and can be downloaded. The symbols were produced and updated by the Graphic Artists Guild Foundation and the National Endowment for the Arts. The symbols should be used on all advertising, publicity, websites, publications, signs, etc. to alert people with disabilities concerning access accommodations and information. The website for accessing these symbols is: <http://www.gag.org/resources/das.php>

- ✓ Access to Employment: Employers may not discriminate against a qualified person with a disability and are required to make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer. Cost alone does not necessarily constitute undue hardship. A person with a disability is qualified if they satisfy the requisite skill, experience and education requirements for the position, and can perform the essential functions of the job with or without reasonable accommodations. Essential functions are those that are fundamental to the job, excluding any marginal functions of the position.

When recruiting, the Grantee and its contractors and subcontractors must include the following written statement:

The (Grantee/contractor name) makes reasonable accommodations for any known disability that may interfere with an applicant's ability to compete in the recruitment and selection process or an employee's ability to perform the essential duties of the job. In order for the (Grantee/contractor) to make such accommodations, the applicant must make known any needed accommodation. Persons using a TDD may call MDOC TDD# (406) 444-2978 or the Montana Relay Service: 800-253-4091.

NOTE: Grantees must not ask an applicant if they have a disability or any questions about their specific disability (including the extent, nature or severity of the disability) prior to extending a conditional offer of employment.

- ✓ **Program Accessibility:** Qualified individuals with disabilities will not be excluded from participation in, or denied the benefits of, any services, programs, or activities funded in whole or in part with federal funds. A qualified individual is one who meets the essential eligibility requirements for receipt of services or for participation in programs or activities. Some examples of reasonable accommodation could include a reasonable modification to rules, policies or practices; the removal of architectural, communication or transportation barriers; or the provision of auxiliary aids and services.

Grantees must take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities; and that the Grantee's activities or services are readily accessible to, and usable by, individuals with disabilities. The Grantee should be able to identify the primary access point to their office building, and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles.

- ✓ **Physical Accessibility:** All new construction, reconstruction, and rehabilitation projects on any multi-family or single-family housing assisted with HOME funds must be equipped with a hard-wired or battery-operated smoke detector including appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises.

The following are highlights of physical accessibility requirements:

- a) **Single-Family - New Construction, Acquisition or Rehabilitation**
Single-family dwellings must be made physically accessible to persons with disabilities upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective homebuyer.

Accessible dwelling units must be distributed throughout a housing project with sites made available in a range of sizes and amenities.

b) **Multi-Family - New Construction or Substantial Rehabilitation**

As discussed in **Chapter 4**, *Procurement Standards*, within **Section IV**, *Construction Bidding and Contracting*, new construction and substantial rehabilitation projects must take into account the applicable accessibility requirements under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act and the Americans with Disabilities Act (ADA).

- The Uniform Federal Accessibility Standards under Section 504 must be applied when a multifamily housing project consists of five or more HOME-assisted units. Under Section 504, at least five percent of the units (or a minimum of 1 unit) must be accessible to persons with mobility impairments and at least an additional two percent of the units (or a minimum of one unit) must be accessible to persons with hearing or vision impairments – with Braille and hard wiring installed.
- ADA housing accessibility requirements apply to housing owned by state and local government entities. ADA accessibility requirements may apply to apartment rental offices and public areas regardless of project ownership. Generally, a project meeting the Uniform Federal Accessibility Standards under Section 504 will meet the ADA accessibility guidelines.
- The Fair Housing accessibility requirements must be applied when a HOME-assisted multifamily housing project involves construction of four or more **attached** units.

Under Fair Housing, covered multifamily dwellings are dwelling units in buildings consisting of 4 or more units served by one or more elevators, or ground floor dwelling units in other buildings with 4 or more units. Covered multifamily dwellings must be designed and constructed in a manner that:

- There is an accessible building entrance on an accessible route, with “no steps”.
- The public and common use portions of such dwellings are readily accessible to and usable by disabled persons.
- All doors and hallways designed to allow passage into and within the premises within such dwellings are sufficiently wide enough to allow passage by disabled persons in wheelchairs.
- There is an accessible route into and through the units.

- Light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations.
- Bathroom walls are constructed to include reinforcements to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat (where such facilities are provided).
- Usable kitchens and bathrooms exist such that an individual in a wheelchair can maneuver about the space.

Other Fair Housing issues may be found on the website of the Department of Labor & Industry, Employment Relations Division, Human Rights Bureau in Helena at 1-800-542-0807 (toll free) or (406) 444-2884 or the website at:

<http://erd.dli.mt.gov/HumanRight/HRhome.asp>

For new construction and substantial rehabilitation projects, Grantees should consult with their architects to ensure all applicable accessible design requirements are being met. The architect must certify the design takes into account the applicable accessibility requirements under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act and the Americans with Disabilities Act (ADA). The certification (**Exhibit 4-E**) must be co-signed by a local official and provided to the appropriate HOME Program Officer.

Please consult the table on the following page for federally-required Section 504 requirements.

- c) **Tenant-Based Rental Assistance** - Program administrators must provide notice of the availability of accessible units, and include a current listing of available accessible units.

Section 504 Requirements
Removal of Physical Barriers
<ul style="list-style-type: none"> • For new construction of multi-family projects, 5 percent (5%) of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (2%) of the units (but not less than one [1] unit) must be accessible to individuals with sensory impairments. • The Section 504 definition of substantial rehabilitation multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent (75%) or more of the replacement cost. In such developments, 5 percent (5%) of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (2%) of the units (but not less than one [1] unit) must be accessible to individuals with sensory impairments. • When rehabilitation less extensive than substantial rehabilitation is undertaken, alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with handicaps, until 5 percent (5%) of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible. • Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice. • Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals. • When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features. • The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.
Provide Program Accessibility
<ul style="list-style-type: none"> • Individuals with handicaps must be able to find out about, apply for and participate in Federally-assisted programs or activities. • Special communication systems may be needed for outreach and ongoing communication (e.g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings). • Policies and procedures must be non-discriminatory (e.g., housing providers may not ask people with handicaps questions not asked of all applicants, screen individuals with handicaps differently or assess an individual's ability to live independently).
Make Employment Accessible
<ul style="list-style-type: none"> • Employers must not discriminate. • Employers must remove physical and administrative barriers to employment. • Employers must make reasonable accommodations for individuals with known handicaps (e.g., job restructuring, providing readers or sign interpreters, making facilities accessible).
Administrative Requirements
<p>If recipients or subrecipients have 15 or more employees, they must:</p> <ul style="list-style-type: none"> ◆ designate a Section 504 Coordinator, and ◆ notify program participants and employees of non-discrimination policies.

- All recipients and subrecipients must conduct self-evaluations of compliance with Section 504.

III. APPLICABLE INTERNET SITES

Grantees may find additional information regarding civil rights, fair housing, equal opportunity and accessible design at the following web sites. The HOME Program does not specifically endorse any of these sites.

Fair Housing and Equal Opportunity:

<http://www.hud.gov/offices/fheo/index.cfm>

Building and Facility Design Guidelines:

<http://www.access-board.gov/>

Americans with Disabilities Act Home Page

<http://www.usdoj.gov/crt/ada/adahom1.htm>

Center for Universal Design

<http://www.design.ncsu.edu/cud/index.html>

Disability Access Symbols Online (Graphic Artists Guild Foundation)

<http://www.gag.org/resources/das.php>

Public Awareness of the Nation's Fair Housing Laws (44 page publication-PDF format)

<http://www.huduser.org/publications/fairhsg/hmwk.html>

Montana Fair Housing (HUD site)

<http://www.hud.gov/local/index.cfm?state=mt>

Montana Fair Housing (Missoula)

<http://www.fairhousing.montana.com>

HUD Equal Housing Logos and Graphics

<http://www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm>

Montana Human Rights Bureau

<http://erd.dli.mt.gov/humanright/housediscrim.asp>

Fair Housing Accessibility Related Links

(Please note that the HOME Program does not specifically endorse any of these sites)

Listed in alphabetical order, with the following designations based on topic:

C - Code; D - Design; DA - Disability Advocacy; G - Government; L - Legal; T - Trade; O - Other

Type	Organization	Address
Gov't	Access Board	www.access-board.gov
DA	ADA & Accessible IT Centers	www.adata.org
Code	Adaptive Environments	www.adaptiveenvironments.org
DA	American Association of People with Disabilities	www.aapd.org
DA	American Association of People with Disabilities	www.aapd-dc.org
Other	American Association of Retired Persons	www.aarp.org
Trade	American Bankers Association	www.aba.com
Trade	American Bar Association	www.abanet.org
DA	American Disabled for Attendant Programs Today	www.adapt.org
Trade	American Institute of Architects	www.aia.org
DA	American Seniors Housing Association	www.seniorshousing.org
Trade	American Society of Civil Engineers	www.asce.org
Trade	American Society of Interior Designers	www.asid.org
Legal	Bazelon Center for Mental Health Law	www.bazelon.org
Design	Bob Vila	www.bobvila.com/features/index.html
Design	Center for Inclusive Design and Environmental Access	www.ap.buffalo.edu
Design	Center for Universal Design	www.design.ncsu.edu/cud/index.html
Design	Center for Universal Design and Environmental Access	www.ap.buffalo.edu/~idea
Gov't	Centers for Medicare and Medicaid Services	www.cmms.gov
Legal	CivilRights.org Network	www.fairhousinglaw.org/fair_housing_laws/index.html
DA	Concrete Change	www.concretechange.org
DA	Consortium for Citizens with Disabilities	www.c-c-d.org
Design, Legal	Cornucopia of Disability Information (CODI)	codi.buffalo.edu
Gov't	Department of Agriculture	www.usda.gov
Gov't	Department of Justice	www.usdoj.gov
Gov't	Department of Treasury	www.treasury.gov
Design	Designguide	designguide.com
DA	Falcon Homes, Inc.	www.falconhomesinc.com
Design	HomeMods.org	www.homemods.org
Other	The Housing Partnership Network	www.housingpartnership.net
DA	Independent Living Centers	www.virtualcil.net/cils
Trade	Institute for Real Estate Management	www.irem.org
Code	International Code Council	www.iccsafe.org
Legal	The John Marshall Law School Fair Housing Legal Support Center	law170.jmls.edu
Trade	MatchMaker Kitchen Designs Ltd.	www.matchmakerkitchens.com/
Design	NAHB Research Center	www.nahbrc.org
Trade	National Affordable Housing Mgmt. Assoc.	www.nahma.org
Trade	National Apartment Association	www.naahq.org

Type	Organization	Address
Trade	National Association of Home Builders	www.nahb.org
Trade	National Association of Realtors	www.nar.realtor.com
Trade, Design	National Association of the Remodeling Industries	www.nari.org
Code	National Conference of States on Building Codes and Standards (NCSBCS)	www.ncsbcs.org
Other	National Congress for Community Economic Dev.	www.ncced.org
Trade	National Council of State Housing Agencies	www.ncsha.org
Gov't	National Council on Disability	www.ncd.gov
DA, Legal	National Fair Housing Advocate Online	www.fairhousing.com
DA	National Fair Housing Alliance	www.nationalfairhousing.org
DA, Legal	National Housing Law Project	www.nhlp.org
DA, Other	National Housing Trust	www.nhtinc.org
Design	National Kitchen and Bath Association	www.nkba.org
Trade	National Low Income Housing Coalition	www.nlihc.org
Trade	National Multi Housing Council	www.nmhc.org
DA	National Organization on Disability	www.nod.org
Design, DA	National Resource Center on Supportive Housing and Home Modification	www.homemods.org
DA	Paralyzed Veterans of America	www.pva.org
Trade	Public Housing Authority Directors Association	www.webcom.com/house/
DA	Self-Determination Housing Project of PA	www.sdhp.org
Other	Smart Growth America	www.smartgrowthamerica.com
Design	Technical Assistance Collaborative	www.toolbase.org
Design	Turtle Homes – barrier-free universal design flexibility, appeal & wide array of integrated assistive technology	www.turtlehomes.com
Gov't, Trade	U.S. Conference of Mayors	www.mayors.org
Gov't	U.S. Department of Housing and Urban Development	www.hud.gov
DA	UCP - Understanding Cerebral Palsy	www.ucp.org/
DA	Wemedia	www.wemedia.com
DA	World Institute on Disability	www.wid.org

Source: Fair Housing Accessibility First website, 2005 (<http://www.fairhousingfirst.org/relatedlinks.asp>)

CHAPTER 5

EXHIBITS

- 5-A Sample Fair Housing Resolution
- 5-B Equal Employment Opportunity Poster
- 5-C Sample Section 504 and ADA Complaint Resolution Procedures
ADA Complaint Form
- 5-D Required Section 3 Contract Language
- 5-E Individual Direct Benefit Recording Form and Direct Benefit Summary Data
- 5-F Letter of Work Notification to an MBE/WBE Firm
- 5-G Tribal Newspapers and Newspapers Published Adjacent to Montana's Indian Reservations
- 5-H Applicant Summary Sheet, Interview and Hiring Form and Grantee Employment Summary
- 5-I Fair Housing Poster
- 5-J Accessibility Notice CPD-05-09: Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and their applicability to housing programs funded by the HOME Investment Partnerships Program and the Community Development Block Grant Program